

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 21st day of March, two thousand eight.

PRESENT:

HON. RALPH K. WINTER,
HON. GUIDO CALABRESI,
HON. RICHARD C. WESLEY,
Circuit Judges.

FATIME AVDIMETAJ,
Petitioner,

v.

MICHAEL B. MUKASEY, ATTORNEY GENERAL,
et al.,¹
Respondents.

07-2228-ag
NAC

¹ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto R. Gonzales as a respondent in this case.

1 **FOR PETITIONER:** **Joshua Bardavid, New York, New York.**

2
3 **FOR RESPONDENTS:** **Jeffrey S. Bucholtz, Acting**
4 **Assistant Attorney General, Carl H.**
5 **McIntyre, Assistant Director, Leah**
6 **V. Durant, Attorney, Office of**
7 **Immigration Litigation, U.S.**
8 **Department of Justice, Washington,**
9 **D.C.**

10
11 UPON DUE CONSIDERATION of this petition for review of a
12 decision of the Board of Immigration Appeals ("BIA"), it is
13 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
14 review is DENIED.

15 Petitioner Fatime Avdimetaj, a native of Kosovo and a
16 citizen of the former Yugoslavia, seeks review of the April
17 27, 2007 order of the BIA affirming the September 6, 2005
18 decision of Immigration Judge ("IJ") Patricia A. Rohan,
19 denying petitioner's application for asylum, withholding of
20 removal, and relief under the Convention Against Torture
21 ("CAT"). *In re Fatime Avdimetaj*, No. A98 402 587 (B.I.A.
22 Apr. 27, 2007), *aff'g* No. A98 402 587 (Immig. Ct. N.Y. City,
23 Sep. 6, 2005). We assume the parties' familiarity with the
24 underlying facts and procedural history of the case.

25 When the BIA adopts the decision of the IJ and
26 supplements the IJ's decision, this Court reviews the
27 decision of the IJ as supplemented by the BIA. See *Yan Chen*

1 *v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). We review
2 the agency's factual findings under the substantial evidence
3 standard, treating them as "conclusive unless any reasonable
4 adjudicator would be compelled to conclude to the contrary."
5 8 U.S.C. § 1252(b)(4)(B); see *Zhou Yun Zhang v. INS*, 386
6 F.3d 66, 73 & n.7 (2d Cir. 2004), *overruled in part on other*
7 *grounds by Shi Liang Lin v. U.S. Dep't of Justice*, 494 F.3d
8 296, 305 (2d Cir. 2007) (en banc).

9 We find that the agency's finding that Avdimetaj
10 failed to establish eligibility for asylum, withholding of
11 removal, and CAT relief is supported by the record. The BIA
12 found that Avdimetaj "failed to establish that the harm she
13 suffered in the former Yugoslavia rises to the level of
14 persecution." In determining whether an applicant has
15 demonstrated persecution, the agency must view events
16 cumulatively, rather than addressing the severity of each
17 event in isolation. See *Manzur v. U.S. Dep't of Homeland*
18 *Sec.*, 494 F.3d 281, 290 (2d Cir. 2007); *Poradisova v.*
19 *Gonzales*, 420 F.3d 70, 79-80 (2d Cir. 2005). Although the
20 BIA found that the 1991 gas attack Avdimetaj suffered and
21 the subsequent destruction of her home due to the "ravages
22 of war" did not rise to the level of persecution, the BIA

1 appears to have "considered each of the incidents separately
2 without determining how they affected the significance of
3 other incidents." *Manzur*, 494 F.3d at 290. In particular,
4 the BIA analyzed Avdimetaj's 1991 gas attack and concluded
5 she "failed to state what consequences she reportedly
6 suffered as a result of the poison gas attack, to show that
7 the attack was directed against her, or to provide any
8 corroborating evidence in support of her claim." The BIA
9 then found that although Avdimetaj was "a witness to the
10 ravages of war," nothing else happened to her until she left
11 in 2004.

12 It is unclear, however, that the BIA took the
13 cumulative effect of Avdimetaj's experiences into account in
14 determining whether she suffered past persecution. See
15 *Poradisova*, 420 F.3d at 80. As a result of the BIA's
16 practice of dividing Avdimetaj's harm "into isolated
17 incidents and disposing of each on different grounds,
18 without explaining the cumulative significance-if any-of
19 each of these harms," we have been deprived of the
20 opportunity to review meaningfully any aggregate analysis
21 the BIA may have conducted. *Manzur*, 494 F.3d at 290.

22 Despite the BIA's erroneous finding as to past

1 persecution, because the IJ explicitly relied "on a valid
2 alternative ground for denying relief that is not tainted by
3 error," remand is futile. *Xiao Ji Chen v. U.S. Dep't of*
4 *Justice*, 471 F.3d 315, 338 (2d Cir. 2006); see also *Cao He*
5 *Lin*, 428 F.3d at 406; *Tian-Yong Chen*, 359 F.3d at 129. In
6 this regard, the IJ found that even assuming Avdimetaj's
7 experiences constituted past persecution, the presumption of
8 a well-founded fear of future persecution was rebutted by
9 evidence of changed country conditions in the record. See 8
10 C.F.R. § 1208.13(b)(1). Substantial evidence supports this
11 finding because the 2004 State Department Country Report in
12 the record reveals that the Serbian government "generally
13 respected the human rights of its citizens."² In light of
14 this record evidence, no "reasonable adjudicator would be
15 compelled to conclude" contrary to the IJ's finding that
16 Avdimetaj's presumption of well-founded fear of persecution
17 was rebutted due to "a fundamental change in circumstances"
18 in Serbia. 8 C.F.R. § 1208.13(b)(1); see *Zhou Yun Zhang*,
19 386 F.3d at 73 & n.7.

² Accordingly, despite the agency's error in analyzing Avdimetaj's claim of past persecution, because the IJ assumed that Avdimetaj had established past persecution but nonetheless found that any presumption of a well-founded fear was rebutted by "a fundamental change in circumstances" in Serbia, the IJ's denial of her asylum application was proper. 8 C.F.R. § 1208.13(b)(1)(i).

1 We also find no error in the agency's finding that
2 Avdimetaj does not have an objective fear of future
3 persecution. See 8 U.S.C. § 1252(b)(4)(B). Indeed, as the
4 BIA noted, Avdimetaj remained in Kosovo, Serbia from 1999
5 until 2004 without suffering any harm. In fact, besides the
6 1991 gas attack, Avdimetaj was never arrested, harmed, or
7 detained by anyone in Kosovo, Serbia. Moreover, as the
8 agency pointed out, her mother and sister continue to live
9 in Kosovo, Serbia without harm. See *Melgar de Torres v.*
10 *Reno*, 191 F.3d 307, 313 (2d Cir. 1999) (finding that where
11 asylum applicant's mother and daughters continued to live in
12 petitioner's native country, claim of well-founded fear was
13 diminished). Although the 2004 Country Report indicates
14 that "violence against women . . . remained a serious and
15 persistent problem" in Kosovo, Avdimetaj was never harmed in
16 any way on account of her gender. Hence, Avdimetaj failed
17 to present "reliable, specific, objective evidence" to
18 support her allegation that she possesses an objectively
19 reasonable fear of individualized persecution if she returns
20 to Serbia. *Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d
21 Cir. 2004).

22 Because Avdimetaj was unable to show the objective

1 likelihood of persecution needed to make out an asylum
2 claim, she was necessarily unable to meet the higher
3 standard required to succeed on a claim for withholding of
4 removal. *See Paul v. Gonzales*, 444 F.3d 148, 156 (2d Cir.
5 2006); *Gomez v. INS*, 947 F.2d 660, 665 (2d Cir. 1991).

6 Finally, we find that substantial evidence supports the
7 BIA's determination that Avdimetaj failed to establish
8 eligibility for CAT relief. Indeed, Avdimetaj has failed to
9 present any evidence that she was tortured in the past or
10 that she would likely be tortured in the future. *See Mu-*
11 *Xing Wang v. Ashcroft*, 320 F.3d 130, 144 (2d Cir. 2003)
12 (finding that "Wang has in no way establish that someone in
13 his particular alleged circumstances is *more likely than not*
14 to be tortured"). The 2004 Country Report in the record
15 indicates that there were no reports of torture taking place
16 in Kosovo. Hence, no "reasonable adjudicator would be
17 compelled to conclude," contrary to the BIA, that Avdimetaj
18 established eligibility for CAT relief. 8 U.S.C.
19 § 1252(b)(4)(B).³

20 For the foregoing reasons, the petition for review is

³ We note that since this appeal was filed, Kosovo has declared its independence from Serbia. We take no stand on what the effect of that is on the petitioner's situation.

1 DENIED. As we have completed our review, any stay of
2 removal that the Court previously granted in this petition
3 is VACATED, and any pending motion for a stay of removal in
4 this petition is DISMISSED as moot. Any pending request for
5 oral argument in this petition is DENIED in accordance with
6 Federal Rule of Appellate Procedure 34(a)(2), and Second
7 Circuit Local Rule 34(d)(1).

8 FOR THE COURT:
9 Catherine O'Hagan Wolfe, Clerk
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11 By: _____